STATE OF MINNESOTA
IN COURT OF APPEALS
A16-0927

State of Minnesota,
Respondent,

vs.

Lamar King,
Appellant.

Filed April 24, 2017
Affirmed
Ross, Judge

St. Louis County District Court
File No. 69VI-CV-15-11

Lori Swanson, Attorney General, St. Paul, Minnesota; and

Mark S. Rubin, St. Louis County Attorney, Michelle M. Anderson, Assistant County Attorney, Virginia, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Sara L. Martin, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Ross, Presiding Judge; Rodenberg, Judge; and Toussaint, Judge.*

* Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to Minn. Const. art. VI, § 10.

U N P U B L I S H E D O P I N I O N

ROSS, Judge

Officers stopped a car leaving an apartment complex parking lot after a caller reported that several men, including one with a gun, had been outside her apartment looking for her boyfriend. The driver indicated that two guns were in the back seat. The officers pat-searched everyone, including front-seat passenger Lamar King, and they found a handgun in King's jacket. On appeal from his felon-in-possession-of-a-firearm conviction, King challenges the constitutionality of the stop and search. Because the car's occupants matched the ethnicity, gender, number, and location of the men the caller had just reported, officers had reasonable suspicion to stop the car. And because the search was a reasonable response to the officers' suspicion that King possessed a gun, the search also was valid. We affirm.

FACTS

The district court learned the following facts during an omnibus hearing after the state charged Lamar King with being a felon in possession of a firearm and King contested the stop and search that precipitated his arrest:

Eveleth Police received a report in February 2014 that two men were fighting in an apartment parking lot. The caller gave her name, address, and telephone number. Police Chief Timothy Koivunen and Officer Anthony Goulet drove separately toward the apartment and learned on the way that the caller said that several black men were outside her apartment door and that one of the men, known as "Renegade," had a handgun. The

caller said that her boyfriend knew the men and believed they were there for him. The caller then said that the men had returned to the parking lot.

Chief Koivunen and Officer Goulet arrived at about the same time, within about one minute after the caller told the dispatcher that the men had gone back to the parking lot. The officers saw a blue car leaving the lot. The chief saw that two black men occupied the front seats. He noticed that two additional black men occupied the back seats. He and Officer Goulet stopped the car at gunpoint. Backup officers arrived.

Chief Koivunen ordered the driver out of the car, and he searched him and asked him about guns. The driver said that two guns were inside the car. The chief removed and searched each passenger one by one. As he did, he saw the handle of a gun beneath the driver's seat and another gun protruding from under the front passenger seat. He last pulled out King, whom he knew went by the nickname "Renegade."

Chief Koivunen pat-searched King before handcuffing him and escorting him to a squad car. There, another officer asked the chief if he had searched King "good," and the chief replied, "[N]o, it was a quick pat-down search." The officer pat-searched King more carefully and found a loaded and cocked .22 caliber revolver in King's jacket pocket.

King argued that the stop was invalid because the police stopped the car only based on unreliable information from a caller who had initially given the dispatcher a false name. And he argued that the second search of his person impermissibly expanded the scope of the stop. The district court denied King's motion to suppress the stop because the caller's report and the officer's observation of the occupants gave the officers reasonable suspicion to stop the car. And it denied the motion to suppress evidence collected after police

searched King for the same reasons and because police knew from the driver's admission and from the chief's observations that guns were inside the car.

King and the state proceeded on a stipulated-facts bench trial. The district court found King guilty and sentenced him to 60 months in prison.

King appeals.

D E C I S I O N

King challenges the district court's denial of his motion to suppress evidence of the gun discovered on his person. We review pretrial suppression rulings independently to decide whether the district court erred as a matter of law. *State v. Harris*, 590 N.W.2d 90, 98 (Minn. 1999). The United States and Minnesota Constitutions protect persons "against unreasonable searches and seizures." U.S. Const. amend. IV; Minn. Const. art. I, § 10. Warrantless searches and seizures are per se unreasonable unless they fall under an established exception. *State v. Othoudt*, 482 N.W.2d 218, 221–22 (Minn. 1992) (citing *Katz v. United States*, 389 U.S. 347, 357, 88 S. Ct. 507, 514 (1967)).

We first address King's challenge to the stop. Police may stop and detain a person briefly to investigate if they have reasonable suspicion to believe that the person may be involved in a crime. *State v. Diede*, 795 N.W.2d 836, 842–43 (Minn. 2011); *see also Terry v. Ohio*, 392 U.S. 1, 19–21, 88 S. Ct. 1868, 1878–79 (1968). King argues that instead of stopping the car based on reasonable suspicion, the officers stopped the car either based on the occupants' race or based on an unreliable caller's tip. The arguments fail.

King is correct that police may not constitutionally detain a person based solely on his race. *State v. Yang*, 774 N.W.2d 539, 551 (Minn. 2009). We will briefly respond to

King's racial argument, although we could also deem it forfeited by King's failure to present it to the district court. *See Roby v. State*, 547 N.W.2d 354, 357 (Minn. 1996). A traffic stop is not invalid merely because the criminal report that preceded it included the suspect's race. *See Yang*, 774 N.W.2d at 551; *State v. Waddell*, 655 N.W.2d 803, 809–10 (Minn. 2003). The police learned of a disturbance involving men attempting to confront another man in an apartment. They learned something precisely about the suspects' ethnicity ("black"), their gender ("males"), their demeanor (they had been "fighting"), their potential danger (at least one "has a gun"), their identity (one was "Renegade"), their number ("multiple"), and their location ("the parking lot"). Race factored into the stop only as a general description of the men reportedly involved in the kerfuffle. King's argument that he was stopped only because of his race overlooks most of the evidence.

King's argument that the caller's report was too unreliable to justify the stop also fails. An officer may base his stop on information provided by a reliable informant. *See State v. Timberlake*, 744 N.W.2d 390, 393 (Minn. 2008). "But information given by an informant must bear indicia of reliability that make the alleged criminal conduct sufficiently likely to justify an investigatory stop by police." *Id.* at 393–94. Although tips from private citizens are presumed reliable, *State v. Davis*, 732 N.W.2d 173, 182 (Minn. 2007), King understates the quality of the call by referring to the information provided as a mere anonymous tip. It is true that the caller at first provided a false name, but she then provided an accurate name, and King offers no legal authority for his legal theory that these circumstances require police to treat the caller as anonymous and unreliable. Tips are particularly reliable when informants give identifying information so police may locate

them. *See City of Minnetonka v. Shepherd*, 420 N.W.2d 887, 888, 890 (Minn. 1988). The caller here provided enough information—including her phone number and address—from which police could find her.

We are satisfied that the information provided by the caller sufficiently indicated its reliability and allowed for reasonable suspicion for the stop. The information was detailed and specific as to identity (even naming King personally by his alias) and as to the conduct that led to the call and the location where the individuals might be found. A reasonable officer could infer that individuals heading from the scene of a disturbance to a parking lot may intend to enter a car. The police chief also testified that the car he stopped was the only car near the parking lot. The stop satisfies the constitutional test for reasonableness.

We reach the same conclusion about the search. The only issue King presented at the omnibus hearing was whether the stop was constitutional. He introduced his challenge to the search only in his brief after the hearing. The district court decided the challenge on the merits despite King's failure to provide adequate notice. We will also.

A police officer does not violate the constitutional reasonableness standard by conducting a protective pat-down search for weapons during a valid stop if the officer reasonably believes that the suspect might be armed and dangerous. *State v. Dickerson*, 481 N.W.2d 840, 843 (Minn. 1992). King points out that a second officer searched him after the chief initially searched him. His argument that the second search is unconstitutional faces two problems. First, it overstates the circumstances to treat the two pat-downs as two independent searches. It is true that, generally, once an officer determines that a suspect is not armed, he may not search the suspect again without probable cause.

State v. Flowers, 734 N.W.2d 239, 255 (Minn. 2007). But the chief's report to his subordinate officer that he had not performed a "good" search when he pulled King from the car, but rather only a "quick" one, informs us that the "second" search was really a continuation and completion of a single adequate search. And second, police were on notice from the report, from the driver's statement about the location of guns in the car, and from the chief's own observations of guns under the seat, that King might have been carrying a handgun. Under these circumstances, a reasonable search is one that is thorough enough to locate a gun anywhere it might be found on King's person. When analyzing whether any search was justified, we must evaluate the totality of the circumstances from the perspective of a reasonable officer and give "due weight . . . to the specific reasonable inferences [that the officer] is entitled to draw from the facts in light of his experience." *Terry*, 392 U.S. at 27, 88 S. Ct. at 1883; *see also Appelgate v. Comm'r of Pub. Safety*, 402 N.W.2d 106, 108 (Minn. 1987). Nothing in the caselaw cited by the parties suggests that the second officer was required to rely on the chief's brief search to safeguard the officer's own safety when the chief passed King to the officer.

We are certain that the circumstances surrounding the search provided an objectively reasonable basis for the officer to doubt that Chief Koivunen's "quick" search satisfied the real safety concerns associated with a reportedly armed suspect. The search that uncovered the gun was based on reasonable suspicion and did not impermissibly expand the scope of the *Terry* stop.

Affirmed.